

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TERRELL CORDARRYL STANFORD,

Plaintiff,

v.

DONNA STASHYN, *et al.*,

Defendants.

Case No. 2:23-cv-02125-JDP (PC)

ORDER

GRANTING PLAINTIFF'S MOTION TO
PROCEED *IN FORMA PAUPERIS* AND
DIRECTING THE CLERK OF COURT TO
RANDOMLY ASSIGN A DISTRICT
JUDGE TO THIS MATTER

ECF No. 2

FINDINGS AND RECOMMENDATIONS

THAT PLAINTIFF'S FIRST AMENDED
COMPLAINT BE DISMISSED WITHOUT
LEAVE TO AMEND FOR FAILURE TO
STATE A CLAIM

ECF No. 8

OBJECTIONS DUE WITHIN FOURTEEN
DAYS

Plaintiff Terrell Cordarryl Stanford, a state inmate, alleges in his amended complaint that defendants Judge Donna Stashyn, defense attorney Peter Firpo, and deputy district attorney Melissa Marshall violated his constitutional rights. ECF No. 8. Plaintiff has failed to cure the deficiencies noted in the court's prior screening order. I will grant plaintiff's application to proceed *in forma pauperis*, which makes the required showing. Accordingly, I will recommend

1 that this action be dismissed.

2 **Screening and Pleading Requirements**

3 A federal court must screen the complaint of any claimant seeking permission to proceed
4 *in forma pauperis*. See 28 U.S.C. § 1915(e). The court must identify any cognizable claims and
5 dismiss any portion of the complaint that is frivolous or malicious, fails to state a claim upon
6 which relief may be granted, or seeks monetary relief from a defendant who is immune from such
7 relief. *Id.*

8 A complaint must contain a short and plain statement that plaintiff is entitled to relief,
9 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its
10 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not
11 require detailed allegations, but legal conclusions do not suffice. See *Ashcroft v. Iqbal*, 556 U.S.
12 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere
13 possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not
14 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024,
15 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that
16 give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264
17 n.2 (9th Cir. 2006) (en banc) (citations omitted).

18 The court must construe a pro se litigant’s complaint liberally. See *Haines v. Kerner*, 404
19 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it
20 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which
21 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).
22 However, ““a liberal interpretation of a civil rights complaint may not supply essential elements
23 of the claim that were not initially pled.”” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251,
24 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

25 **Analysis**

26 The amended complaint’s allegations are similar to those in the original complaint. In
27 September 2010, defendant-attorney Peter Firpo convinced plaintiff to fraudulently sign a plea
28 agreement while defendants Judge Stashyn and District Attorney Marshall watched without

1 intervening. ECF No. 8 at 3. Plaintiff alleges that all of the defendants exhibited deliberate
 2 indifference towards plaintiff during the plea hearing. The complaint also alleges that in August
 3 2008, Firpo and Marshall did not intervene when Judge Stashyn failed to read plaintiff his “pre
 4 [bargain] dialect.”¹ *Id.* at 4.

5 Plaintiff has not cured the deficiencies noted in the court’s prior order. *See* ECF No. 7.
 6 Thus, for the same reasons noted therein, the court will recommend that plaintiff’s first amended
 7 complaint be dismissed without prejudice for failure to state a claim.

8 The allegation that defendants violated plaintiff’s constitutional rights in connection with
 9 his plea deal sounds in habeas corpus and is not appropriate in this § 1983 action. *See Badea v.*
 10 *Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (holding that a habeas corpus petition is the proper vehicle
 11 for challenging the “legality or duration” of confinement). Further, no claim for civil damages is
 12 cognizable unless and until plaintiff’s criminal conviction is invalidated. *See Heck v. Humphrey*,
 13 512 U.S. 477, 487 (1994). Plaintiff has not demonstrated that his criminal conviction is invalid.

14 Moreover, defendants are immune to plaintiff’s claims. Plaintiff’s claims against Judge
 15 Stashyn are foreclosed by judicial immunity. “[J]udges are absolutely immune from civil liability
 16 for damages for their judicial acts.” *Mullis v. U.S. Bankr. Crt. for Dist. of Nevada*, 828 F.2d
 17 1385, 1388 (9th Cir. 1987). And criminal defense lawyers, like defendant Firpo, are not subject
 18 to liability under § 1983 for their handling of criminal cases. *See Polk Cnty. v. Dodson*, 454 U.S.
 19 312, 325 (1982) (public defenders do not act under color of law for purposes of § 1983 liability);
 20 *Briley v. California*, 564 F.2d 849, 855 (9th Cir. 1977) (privately retained attorneys do not act
 21 under color of law for purposes of § 1983 liability). Finally, defendant Marshall is immune as a
 22 prosecutor. A prosecutor is protected by absolute immunity from liability in a civil rights suit for
 23 damages “when performing the traditional functions of an advocate.” *Kalina v. Fletcher*, 522
 24 U.S. 118, 131 (1997) (citing *Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993); *Imbler v.*
 25 *Pachtman*, 424 U.S. 409, 430 (1976)).

26 Accordingly, it is ORDERED that:

27 _____
 28 ¹ The court understands this as a reference the colloquy between the trial court and a
 criminal defendant relating to the waiver of the criminal defendant’s rights.

1 1. Plaintiff's application to proceed *in forma pauperis*, ECF No. 2, is granted.

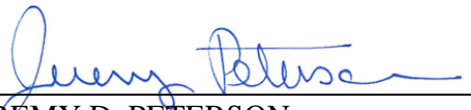
2 2. The Clerk of Court is directed to assign a district judge to this action.

3 Further, it is RECOMMENDED that this action be dismissed without leave to amend.

4 I submit these findings and recommendations to the district judge under 28 U.S.C.
5 § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court,
6 Eastern District of California. Within 14 days of the service of the findings and
7 recommendations, any party may file written objections to the findings and recommendations
8 with the court and serve a copy on all parties. That document should be captioned "Objections to
9 Magistrate Judge's Findings and Recommendations." The district judge will review the findings
10 and recommendations under 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the
11 specified time may result in the waiver of rights on appeal. *See Wilkerson v. Wheeler*, 772 F.3d
12 834, 839 (9th Cir. 2014).

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14 IT IS SO ORDERED.

15 Dated: January 16, 2024

16 
17 JEREMY D. PETERSON
18 UNITED STATES MAGISTRATE JUDGE
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